

ORIGINAL

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Hon. Michael Powell  
Chairman  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: IB Docket No. 01-185  
*Flexibility for Delivery of Communications by  
Mobile Satellite Service Providers*  
File No. SAT-ASG-20010302-00017 et al.  
Application of MobileSatellite Ventures Subsidiary LLC to Launch and  
Operate a Next-Generation Satellite System

Dear Chairman Powell,

Mobile Satellite Ventures is a proud pioneer in bringing mobile communications to every corner of North America using satellite technology. With our next-generation, replacement system, for which we first sought authority in January 2001, we remain committed to continuing this legacy and the legacy of U.S. leadership in space-based technology. The system uses an innovative, spectrum-efficient design that combines high-power, spot-beam satellites with an underlay of urban base stations operating on the same frequencies, to provide more reliable and affordable, hand-held service to millions of users. Because it provides more value to more potential customers, it is the only replacement system that can reasonably be financed in the current business climate.

We urge you to reject proposals to require MSV to participate in an auction in order to launch its next generation system, for the following reasons:

- licensees should be encouraged to replace their existing systems with more efficient systems without threat of losing their licenses and their businesses
- our licensed spectrum (the MSS L-band) must continue to be used for satellite service, so any auction of the spectrum will not serve the goal of letting the market decide whether the spectrum's highest and best use is for satellite or terrestrial service
- the process of considering and conducting an auction will cause further delay at a time when MSV needs to begin replacing its existing system
- if MSV loses an auction, tens of thousands of existing customers and resellers (some of which hold their own FCC licenses) will be displaced

- the ORBIT Act precludes the use of an auction of the license for a regional satellite system such as ours.

*Technical innovation should be encouraged.* MSV has invested almost a billion dollars in its current system. That system has struggled financially, but today it serves tens of thousands of users, including many in the public safety community. As a satellite system, it provides a uniquely ubiquitous service unlike anything offered by terrestrial wireless systems.

Subjecting us to an auction will discourage MSV and other licensees from developing innovative, more efficient ways to use their licensed spectrum. If existing licensees and system operators are subjected to the high costs and risks of auctions each time they innovate or improve the utilization of their own spectrum, where is the incentive to innovate? Historically, the Commission has encouraged this kind of innovation.

Moreover, the spectrum flexibility we seek will not change the fundamental nature of MSV's service. The replacement system remains primarily a satellite system. All the spectrum will be used for satellite service and will be under the control of the network operator to optimize for satellite service. (This is the elegance of MSV's design: that the only spectrum used by the urban base stations is spectrum that is otherwise unavailable for satellite communications at that location.) MSV's proposal represents innovation and spectrum efficiency – nothing more or less.

*The L-band is not suited for experimenting with market-based spectrum allocation.* MSV recognizes the Commission's interest in developing new and better ways to encourage the use of spectrum in ways that may be substantially different from the current allocation and use. The MSS L-band, however, is not the right band for such an experiment, since regardless of the outcome of any auction, it will continue to be limited to use primarily for the operation of a Mobile Satellite Service system. Thus, any auction will not open the band to potentially significantly different use. This is the result of both the international allocation of the band and the presence of several existing satellite systems. The technical interference analysis in the record demonstrates beyond any doubt that the L-band cannot be used for terrestrial wireless service alone.

Unlike other spectrum, it is hard to see how the Commission can even give a "clear title" to L-band spectrum. As you know, L-band spectrum must be coordinated internationally. MSV currently coordinates with Canada, Mexico, Great Britain, the Russian Republic and Japan. Coordination is based on the spectrum needed for satellite operations by all these parties, and may change if their needs change. Therefore, bidders won't know what they are getting because coordination changes the amount available in ways that cannot be foreseen at the time of the auction.

*A replacement satellite must be ordered now to avoid a gap in service when the existing satellites reach their end of life.* Launched in 1995, MSV's satellite is reaching the end of its useful life and must be replaced. MSV has a reasonable expectation that the Commission will permit it to replace its satellite. Before the Commission could hold an auction, however, it must conduct an extensive proceeding and give all affected entities sufficient time to participate, a process that could easily take another year. When MSV filed its application twenty months ago,

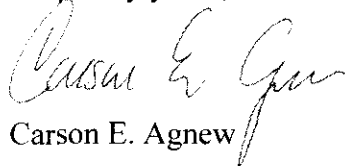
we believed there was time to finance, build, and launch a replacement following consideration of our idea by the Commission. Additional delay is terribly unfair to MSV, its investors, and its customers. MSV's ability to maintain the existing system and service in the face of continued delay in constructing the replacement system would be substantially imperiled.

*An auction would introduce substantial risk to an ongoing business with vulnerable customers.* Although we are convinced that it is impossible to do so, suppose an auction could be structured to provide MSV with substantial incentives to participate and the resources to potentially prevail. Nevertheless, it would be unacceptable for the Commission to force MSV to risk its ongoing business on the uncertainty of an auction—even one that might be expected to have a favorable result. This regulatory uncertainty would hurt MSV's existing business and the businesses of its customers' end-users. MSV's current customers, including resellers that have their own FCC licenses, have invested tens of millions of dollars in their equipment and have developed a reliance on its availability. Even if MSV were convinced that it would be compensated for participating in the auction, it is not fair to subject those customers and resellers to that same risk.

*The Commission is legally barred from auctioning licenses for regional satellite systems.* The ORBIT Act prohibits the Commission's use of auctions to license satellite systems, unless they are limited to domestic use. MSV's current system is lawfully used on a regional basis and MSV's expects to do likewise with our next-generation system. As such, the strictures of the ORBIT Act are relevant.

Our application has been pending now for twenty months. The technical issues regarding our proposal have all been fully resolved in the record. Time is short for the construction and launch of a replacement satellite. We urge you to act as soon as possible to give us the necessary authority to proceed.

Very truly yours,



Carson E. Agnew

cc: Hon. Kathleen Abernathy  
Hon. Michael Copps  
Hon. Kevin Martin  
Donald Abelson, Chief, International Bureau  
Thomas Sugrue, Chief, Wireless Telecommunications Bureau  
Robert Pepper, Chief, Office of Plans and Policy  
Edmond Thomas, Chief, Office of Engineering and Technology